

(1999) 07 P&H CK 0144
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2703 of 1997

ABN-AMRO Bank

APPELLANT

Vs

The Punjab Urban Planning and Development Authority

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11

Citation : AIR 2000 P&H 44 : (1999) 3 CivCC 427 : (2000) 1 ILR (P&H) 259 : (1999) 123 PLR 479 : (1999) 4 RCR(Civil) 197

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : V.N. Kaura and Paramjeet Benipal and Rohit Sapra, for the Appellant; H.S. Awasthi and Ameet Awasthi, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—On or about 15-6-1996 the Punjab Urban Planning and Development Authority instituted a suit for the recovery of Rs. 65,58,981.00 with future interest at the rate of 17% per annum and for declaration that the agreement/waiver letter dated 7-7-1993 written by the plaintiff to the defendant was not binding on the plaintiff. Upon service of summons, the defendant filed an application under Order 7, Rule 11 read with Section 151 of the CPC for rejection of the plaint in the above suit on 26-9-1996. In this application, the defendant had taken the following grounds for substantiating its plea of rejection of the plaint :--

"2. Suffice it for the purpose of this application to state that the plaintiff's suit is in essence for a declaration that the settlement recorded in a letter dated July 7, 1993 addressed by the Housing Commissioner on behalf of the Punjab Housing Development Board of the Government of Punjab to the Defendant Bank is void, as having been procured by coercion as defined in Section 15 of the Indian Contract Act, and claiming consequential relief of damages amounting to Rs. 65,58,981.04 (Rupees sixty five lacs fifty eight thousand nine hundred eighty

one and paise four only).

3. The Defendant submits that the suit as framed without seeking the relief of declaration that the aforesaid agreement entered into on behalf of the Punjab Housing Development Board is void and for cancellation thereof is not maintainable."

2. Reply to the application was filed and it was contested by the plaintiff. Learned trial Court vide its order dated 4-3-1997 dismissed the application of the defendant and allowed the application of the plaintiff for admission and denial of documents. The concluding part of the impugned order dated 4-3-1997 reads as under :--

"On the other hand, the learned counsel for the respondent/plaintiff argued forcibly that it is again the point to be decided after taking evidence whether there developed a new contract qua letter dated 7-7-93. And I am agreed with the contentions made by the counsel for the respondent/plaintiff. No doubt the authorities mentioned by the applicant/defendant counsel are not disputed but their application will be looked into only at the time of final arguments.

XX XX XX XX XX XX XX At this stage, the suit of the plaintiff does not seem to be absolutely frivolous and evidence is to be called to decide the matter in controversy and the facts mentioned in the plaint require consideration. From the perusal of the documents, it also comes to light that the applicant/defendants never purchased these bonds and it violated the conditions of documents. There are triable issues and the plaint cannot be rejected. The applicant/defendant has not yet filed the written statement meaning thereby at this stage entire averments made in the plaint are to be taken as true. There is no illegality in the plaint and it cannot be rejected at this stage and hence in the given circumstances, the application under Order 7, Rule 11 of C.P.C. is hereby dismissed and also the application for admission and denial of the plaintiff is hereby allowed."

3. As no interim order of stay of the proceedings in the suit was granted by the Court, the proceedings before the learned trial Court continued and the defendant filed their written statement dated 30-4-1997. It must be noticed that in the written statement filed by the defendant a number of preliminary objections have been taken. Amongst others, specific preliminary objections have been taken on the ground that the suit was not maintainable and was barred by accord and satisfaction, waiver and estoppel founded on the averments made in the written statement. Plea of estoppel and the plaint not disclosing appropriate cause of action have also been taken. These preliminary objections have been denied in the replication filed by the plaintiff.

4. Learned counsel appearing on behalf of the petitioner primarily contended that the learned trial Court has fallen in error of jurisdiction in rejecting the application of the defendant. It is contended that by accepting payment in terms of letter dated 7-7-1993 written by the plaintiff to the defendant and especially

unconditional acceptance of such sum absolves the defendant of any liability. No facts constituting an assailable cause of action on the plea of misrepresentation, fraud or coercion has been pleaded in the plaint to justify continuation of the suit, in other words, the plaint does not disclose any cause of action in the eyes of law. For this purpose, the learned counsel placed reliance upon the following portions of the letter dated 7-7-1993 :--

"(8) AND WHEREAS there have consequently been protracted negotiations between the Bank and the Board resultant upon which it has been agreed that the Bank would immediately return the principal amounting to Rs. 9,75,58,904.11 to the Board. The interest would be calculated at the rate of 17% p.a. for the first six months up to 3rd Sept., 1992, which amounts to Rs. 82,92,507/- (which has already been received by us) and for the balance period i.e. 4th Sept., 1992 till date of payment of the principal amount, interest would be paid at the rate payable on fixed deposits of this length of time, which, calculated at the rate of 12 1/2% per annum comes to Rs. 1,02,23,638/-. Also in case and as and when the IRFC Bonds are transferred in the name of the Bank of Andhra Bank returns the moneys due to the Bank together with interest, the Bank would additionally make a payment of the interest differential between the rate of 17% p.a., and the fixed deposit rate for the balance period i.e., 12 1/2% p.a. amounting to Rs. 36,80,510/-. Interest on this differential amount of Rs. 36,80,510/- would be paid to us by the Bank at the rate applicable to fixed deposits of the period for which the amount is retained by the Bank, in accordance with the provisions of this para, indicated above, provided the Bank also likewise receive interest on its interest claims.

That subject to the provisions of this paragraph as indicated above, the Board would accept payment as above in full and final settlement of its claims arising out of or in connection with the said investment, and for which the Board would furnish the Bank a disclaiming and waiver as hereinafter appearing.

That the Bank, shall from time to time, and not at least less than once in a month, intimate the position and progress made in the matter of settlement of claims arising out of the purchase of these IRFC Bonds.

(9) AND WHEREAS pursuant to the said settlement, the Bank has paid to the Board a sum of Rs. 10,77,82,542.11 Ps (Rupees ten crores seventy seven lakhs eighty two thousand five hundred forty two and paise eleven only) in full and final settlement of the Board's claims against the Bank arising out of or in connection with the said investment (the receipt of which in full and final settlement, as aforesaid, the Board hereby admits and acknowledges), and consequently the Board is executing the discharges and waiver as hereinafter appearing.

(10) NOW THEREFORE, we the Punjab Housing Development Board acting through the Housing Commissioner, Punjab Housing Development Board do hereby accept the said sum of Rs. 10,77,82,542.11 Ps (Rupees ten crores

seventy seven lakhs eighty two thousand five hundred forty two and paise eleven only) in full and final settlement of all claims of the Punjab Housing Development Board in respect of or arising out of or in connection with the said investment of Rs. 9,75,58,904.11 (Rupees nine crores seventy five lakhs fifty eight thousand nine hundred and four and paise eleven only) on behalf of the Board and do confirm and declare that the Bank shall be entitled at its discretion to demand, sue for, enforce, settle compromise or otherwise howsoever deal with any and all matters arising out of or concerning the same without any right in the board in respect of the usufructs, proceeds or benefits of such demand, suit enforcement, settlement, compromise or other dealing(s) and the Board hereby disclaims, waives and relinquishes in favour of the Bank any and all rights and claims whatsoever that it may have with respect thereto."

5. While on the other hand, the learned counsel appearing for the respondent has contended that the plaint read with the documents placed on record by the plaintiff constitutes a complete cause of action entitling the plaintiff for determination of his suit on merits. He further contended that the letter dated 7-7-1993 in fact stood revoked by subsequent correspondence between the parties and sufficient grounds have been taken in the plaint to satisfy the basic ingredients under Sections 13 to 19A of the Contract Act. The pleas taken and documents read in support thereof render the letter dated 7-7-1993 ineffective and inconsequential. He mainly relied upon the notice given by the counsel on behalf of the plaintiff to the defendant on 7-8-1993 itself. He emphasized on the pleas taken in the following paragraphs of the said notice, which reads as under :--

4. On May 13, 1992 our clients received a letter from the Bank dated March 12, 1992 intimating that the Bank had purchased IRFC Bonds instead of NPC Bonds, the reduced yield of 9% of the security was not mentioned. When our clients made enquiries about the reasons for back-dating of letter, they were informed by the Bank officials that it was clerical error and in fact the letter was written on May 12, 1992.

XX XX XX XX XX XX 6. Our clients vide their letter dated September 4, 1992 expressly recorded that they had been informed by the Bank about the purchase of IRFC Bonds and further that the Bank had assured them that the yield of investment would be the same. On that understanding our clients were induced to extend the period of investment by 180 days provided the yield of the first six months at the rate of 17% which worked out to Rs. 82,92,507.00 was remitted to them immediately. This interest yield at the rate of 17% was remitted to our clients and thereafter the investment was continued for a further period of 180 days, that is till March 3, 1993. By payment of interest for the first six months at the rate of 17% our clients were led to believe that they would be getting interest at the rate of 17% even for the future period. xx XX XX XX

9. Our clients were asked to execute a letter of waiver. Under compelling circumstances and on account of the situation created by the Bank in acting

contrary to the conditions under which our clients had agreed to make the investment, our clients had no option but issue the waiver letter dated July 7, 1993 as desired by you. It is submitted that this waiver letter was executed by our clients without free consent. In any event our clients claim that the waiver letter which has not been accepted is invalid, wrongful, and ineffectual. Our Clients have instructed us to withdraw, revoke, rescind and cancel the waiver letter of July 7, 1993.

6. The first controversy that arises from the aforesaid complex facts is whether the Court is to look into the plaint alone for determining the merit of an application under Order 7, Rule 11 of the CPC or it has to examine the pleadings of the respective parties and the documents along therewith.

7. It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER". A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the provisions of Order 7, Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various Courts so as to take within its ambit even the documents filed by the plaintiff along with plaint or subsequent thereto but prior to the hearing of such application. It would be *moreso* where the documents have been referred to in the plaint itself. But the defence raised by the defendants in his written statement or the documents filed along therewith certainly falls beyond the zone of consideration, where an application for rejection of a plaint is being considered by the Court. The language of the rule does not admit any scope for doubt that the written statement filed by the defendant cannot be referred or relied upon by the applicants for decision of such application. Whether the plaint discloses any cause of action or not, is a question founded on the basic cause of action pleaded by the plaintiff in his plaint. It must thus necessarily be construed that language of Rule 11 is circumscribed by the limitation of reading the plaint at best with its supporting documents. A Full Bench of this Court in the case of Harnam Singh Vs. Surjit Singh, , held as under :--

"It is well settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff."

8. The above view has been accepted by all the Courts. Reference in this regard

can be made to cases *Pramilla Khosla Vs. Rajnish Kumar Khosla*, , *Bhagwan Das Vs. Goswami Brijesh Kumarji and Others*, ; *Dodsal Private Ltd. and Another Vs. Narmada Seaways Ltd. and Others*, . Thus, I have no hesitation in coming to the conclusion that this Court must look into the plaint and the documents filed on record and more particularly the documents, which have been referred in the plaint to determine the merits of the application filed by the defendant-applicant-petitioner under Order 7, Rule 11 of the Code of Civil Procedure.

9. Learned counsel for the petitioner Mr. V.N. Kaura, contended that the plaintiff has no cause of action to approach the Civil Court as it had executed a letter in full and final settlement of its claim arising from the transaction between the parties. In alternative it was contended by Mr. Kaura that the basic ingredients of fraud or misrepresentation has neither been stated nor the averments in the plaint validly constitute a ground of fraud, misrepresentation or undue influence and as such the plaint does not disclose a valid cause of action in law. Resultantly the plaint should be rejected.

10. On the other, learned counsel for the respondent, Mr. Awasthi argued that the plaint and the documents filed on record fully discloses an actionable causes in favour of the plaintiff. He further contended that an application for amendment is already pending before the trial Court which itself will frustrate the alleged defence pointed out by the petitioner before this Court. It is also argued by Mr. Awasthi that the matter can be gone into only upon conclusion of complete evidence and not by means of filing the present application. Mr. Awasthi contended that the impugned order passed by the learned trial Court does not call for any interference within the limited scope of revisional jurisdiction of this Court.

11. Well accepted canons of civil jurisprudence makes a clear distinction between "plaintiff has no cause of action" and "the plaint does not disclose cause of action" in the earlier part, there is complete absence of a right to sue. While in the latter, the right to sue may exist, but it is not well founded on the basis of the averments made in the plaint. The plaint lacks essential and material particulars which would give an effective cause of action to the plaintiff. Where on the face of it, the plaint does not disclose any cause of action, the plaint may be liable to be rejected, but where the parties are to produce oral and documentary evidence to substantiate and support their cause of action and relief claimed for in the plaint, the Court has to consider the entire material placed on record and the suit would be liable to be decided on merit.

12. The above distinction was clearly stated by a Full Bench of Allahabad High Court in the case of *Jagannath Prasad and Others Vs. Smt. Chandrawati and Another*,

13. In a recent case *State of Orissa Vs. Klockner and Company and Others*, , the Hon''ble Supreme Court of India while approving the following view taken by the learned single Judge of the High Court dismissed the Special Leave Petition.

"From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose a cause of action. No specific reason or ground is stated in the order in support of the finding that the plaint is to be rejected under Order 7, Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petition filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20-4-1982 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint."

14. In the light of the above settled principles one has to look into the contents of the letter dated 7th July, 1993, which according to the applicant negates the right of the plaintiff to sue, having received a sum of Rs. 10,4,82,542.11 paise only in full and final settlement of all the claims of the Punjab Housing Development Board (plaintiff) in respect of or arising therefrom or in connection with the said investment of rupees more than 9 crores. The bare reading of the plaint itself shows that the plaintiff has challenged the validity, legality of the letter dated 7th July, 1993 and has prayed for its cancellation in paragraph 20 of the plaint. It the right of the plaintiff to recover its total amounts. The Board has filed the suit for recovery of Rs, 65,58,981/- as already noticed. The plaintiff has taken up the ground of misrepresentation, concealment of facts and fraudulent conduct on the part of the present petitioner. In addition to reference to the specific documents executed between the parties, a reference has been made to the notice dated 7th August, 1993, served, by the Board through its counsel upon the petitioner withdrawing the letter dated 7th July, 1993 much prior to the institution of the suit and calling upon the defendant (petitioner) to pay its amounts. Various preliminary objections have been taken with regard to the maintainability of the suit and also the plea of waiver and estoppel. In other words, various documents placed on record by the parties and more particularly the documents referred to in the plaint on their adjunct reading with the averments made in the plaint raises triable issues on which the parties will be leading complete and required evidence.

15. At this stage, it may not be very appropriate for this Court to discuss the effect and consequences arising from each and every document clinching upon the pleadings of the parties to avoid prejudice to either of the parties to the proceedings. Whether the plaintiff would ultimately succeed or not is a question to be determined by framing of an appropriate issue but to say that the plaint on the stated facts and the documents in support thereof, does not disclose any

cause of action nan hardly be sustained.

16. Learned counsel for the petitioner has placed heavy reliance upon the judgment of the Hon''ble Supreme Court in the case of Kapur Chand Godha Vs. Mir Nawab Himayatalikhan Azamjah, to contend that the respondent here had given full discharge vide their letter dated 7-7-1993 and had received the consideration in full satisfaction of their claim. The respondent having accepted the payment unconditionally have no cause of action. It must be noticed, at the (rut set, that in this case the Hon''ble Supreme Court was concerned with the case after it had been decided on merits and a decree had been passed by the Courts below. The Court was not concerned with rejection of plaint within the ambit and scope of Order 7, Rule 11 of the Code of Civil Procedure. Even on facts, there was no challenge on the ground of fraud, misrepresentation and undue influence in relation to execution of a document of full and final settlement.

17. Other judgment which has been relied upon by the learned counsel in support of his alternative arguments is Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, , where the Hon''ble Supreme Court of India observed as under :---

"In case of fraud, under influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any Ct. ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion."

18. Again in this case, the Hon''ble Supreme Court was concerned with a case where the judgment and decree had already been drawn by the Court of competent jurisdiction and even the appellate Court had passed the judgment and decree.

19. The above paragraphs of the plaint: seen in the right of the documents filed by the plaintiff on record, more particularly the notice and the averments that it was entirely because of undue influence exercised by the petitioner declining to refund the public money and commanding the public to sign a letter as per draft cannot be said to be a case of no pleadings or where the plaint discloses no cause of action. The Court must see the cumulative effect of the case pleaded in the plaint supported by the documents, if filed by the plaintiff, to examine the totality of the consequences arising from the provisions of Order 7, Rule 11 of the CPC for limited scope and it is neither permissible nor proper for this Court to take into consideration the defence of the defendants. The learned trial Court has permitted the plaintiff to lead evidence and has protected the interest of the present petitioner by keeping in view the questions in relation to waiver and estoppel as well as constituents of fraud and misrepresentation open between the parties.

20. It has been pleaded in the plaint that even the agreed rate of Interest was

not paid to the plaintiff nor the plaintiff was informed of any amounts recovered even in terms of the letter dated 7th July, 1993. In para 8 of the letter dated 7-7-1993 it was stated as under :--

"(8) AND WHEREAS there have consequently been protracted negotiations between the Bank and the Board resultant upon which it has been agreed that the Bank would immediately return the principal amounting to Rs. 9,75,58,904.11 to the Board. The interest would be calculated at the rate of 17% p.a. for the first six months up to 3rd Sept., 1992, which amounts to Rs. 82,92,507/- (which has already been received by us) and for the balance period i.e. 4th Sept., 1992 till date of payment of the principal amount, interest would be paid at the rate payable on fixed deposits of this length of time, which, calculated at the rate of 12 1/2% per annum comes to Rs. 1,02,23,638/-. Also In case and as and when the IRFC Bonds are transferred in the name of the Bank of Andhra Bank returns the moneys due to the Bank together with interest, the Bank would additionally make a payment of the interest differential between the rate of 17% p.a., and the fixed deposit rate for the balance period i.e., 12 1/2% p.a. amounting to Rs. 36,80,510/-. Interest on this differential amount of Rs. 36,80,510/- would be paid to us by the Bank at the rate of applicable to fixed deposits of the period for which the amount is retained by the Bank, in accordance with the provisions of this para, indicated above, provided the Bank also likewise receive interest on its interest claims.

That subject to the provisions of this paragraph as indicated above, the Board would accept payment as above in full and final settlement of its claims arising out of or in connection with the said investment, and for which the Board would furnish the Bank a disclaimer and waiver as hereinafter appearing.

That the Bank, shall from time to time, and not at least less than once in a month, intimate the position and progress made in the matter of settlement of claims arising out of the purchase of these IRFC Bonds."

21. The right of the plaintiff bank, thus, to recover the amount to the above limited extent, even if it is assumed that the letter dated 7th July, 1993, is valid and proper cannot be frustrated, the amount being less than the amount claimed in the plaint. Thus, in any case the plaint to the limited extent discloses cause of action in favour of the plaintiff bank and against the defendant. What will be the merit of this claim is again a question to be gone into by the Court at the appropriate stage and upon conclusion of evidence. Partial rejection of a plaint is against not permissible. The provisions of Order 7, Rule 11 of the CPC are intended to finally determine the rights of the parties at earlier stage on the limited grounds stated in that rule. A Bench of this Court in the case of Bansi Lal Vs. Som Parkash and Others, held as under :--

This rule (Order 7, Rule 11) does not justify the rejection of any particular portion of a plaint." In support of this statement the learned author has relied on Raghubans Puri v. Jyoti Swarup ILR 1907 All 325, Sree Raja Venkata Rangiah

Appa Rao Bahadur and Another Vs. The Secretary of State for India in Council and Others, and Maqsd Ahmad v. Mathura Datt and Co. AIR 1936 Lah 1021.

"I am therefore of the opinion that the learned Senior Subordinate Judge was in error in upholding the rejection as to a part and setting aside the rejection in regard to the other part. This appeal which I am treating as a petition for revision must therefore, be allowed and the rule made absolute, and I order accordingly."

22. The concept of partial rejection is apparently inapplicable to the provisions of Order 7, Rule 11 of the Code of Civil Procedure, it would have its limited application in regard to the provisions of Order 6, Rule 16 of the Code. There could be partial striking out of pleadings but not rejection of plaint. Partial acceptance or rejection or even admission of appeals in absence of a specific rule to that effect was described by the Hon'ble Supreme Court of India not a proper exercise of jurisdiction. In this regard, reference can be made to the case of Ramji Bhagala Vs. Krishnarao Karirao Bagra and Another, . This is not even the main controversy between the parties in the present case. Thus, I see no reason to discuss this contention in any further elucidation.

23. To bring out the cause of action, a plaint must state necessary conditions to maintain a suit. The merit of those conditions and/or terms is inconsequential at the stage, for consideration of such application. What evidence the plaintiff would lead to prove his case or what probable defence the defendant would raise is not the concern of Court at that initial stage of proceedings. Cause is the proper generic term. Its construction must and has to be decided keeping in mind the facts and circumstances of each case. The steps taken in the suits are proper in law and on facts of the case, they call for no need to retrace the order passed by the learned trial Court.

24. I am unable to agree with the contention that the learned trial Court has fallen in error of jurisdiction in dismissing the application at this stage and hold that there are triable issues which cannot be rejected at the threshold and the parties must be permitted to conclude their evidence. Being unable to see any error of jurisdiction or otherwise in the impugned order dated 4-3-1997, I have no hesitation in dismissing this revision. However, without any order as to costs.

25. As the present suit was instituted in the year 1996 and keeping in view the peculiar facts of this case, T would prefer to request the learned trial Court to decide the suit as expeditiously as possible. In any case within one year from the date a copy of this order is placed ,on the record of the trial Court.